

ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b),

MB Docket No. 02-136

Table of Allotments,

RM-10458

FM Broadcast Stations.

RM-10663

(Arlington, The Dalles, Moro, Fossil, Astoria,

RM-10667

Gladstone, Portland, Tillamook, Coos Bay,

RM-10668

Springfield-Eugene, Manzanita and Hermiston,

Oregon, and Covington, Trout Lake, Shoreline,

Bellingham, Forks, Hoquiam, Aberdeen,

Walla Walla, Kent, College Place, Long Beach

and Ilwaco, Washington)

To: Office of the Secretary

Attn: Assistant Chief, Audio Division

Media Bureau

**MOTION FOR SEVERANCE OF COUNTERPROPOSAL**

New Northwest Broadcasters LLC ("NNB"), by and through its attorneys, hereby submits the following Motion for Severance of Counterproposal in the above-referenced proceeding. On July 29, 2002, NNB timely submitted a counterproposal in this docket, which the Commission identified as RM-10668 ("NNB's Counterproposal"). As discussed in Further Comments that NNB filed in this proceeding on March 25, 2003, NNB's Counterproposal can be severed from and processed independently of the other proposals put forward in this proceeding.

Specifically, in their original petition for rulemaking in this proceeding, Mid-Columbia Broadcasting, Inc. ("Mid-Atlantic") and First Broadcasting Company, L.P. ("First Broadcasting") proposed, *inter alia*, the allotment of Channel 226A at Trout Lake, Washington. NNB's Counterproposal proposed, *inter alia*, the mutually exclusive allotment of Channel 226C3 at

Gladstone, Oregon for KAST-FM, which is currently licensed to operate on Channel 225C1 in Astoria, Oregon. NNB's Counterproposal also demonstrated that Channel 236A could be allotted in place of Channel 226A at Trout Lake should the Commission conclude that an allotment at Trout Lake was in the public interest. This change would eliminate the mutual exclusivity between Mid-Columbia and First Broadcasting's original proposal regarding Trout Lake and NNB's Counterproposal. The Further Comments also noted that no other counterproposal is mutually exclusive with NNB's Counterproposal.

On May 28, 2004, the Media Bureau's Audio Division released a Report and Order (DA 04-1540) (hereinafter "May 28 Order") terminating this proceeding and granting NNB's Counterproposal.<sup>1</sup> The May 28 Order was then set aside by an Order (DA 04-1647), released June 8, 2004. The technical analysis in the May 28 Order of NNB's Counterproposal and the other proposals in this proceeding confirms the conclusion in NNB's Further Comments that the sole conflict between NNB's Counterproposal, Mid-Columbia's and First Broadcasting's original rulemaking petition's proposal, and all other counterproposals, lies between NNB's

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<sup>1</sup> A few typographical errors appear in the FCC's May 28 Order; they are as follows:

In paragraph 11, the third sentence should read (revised and added language in bold), "With respect to coverage of the Urbanized Area, we note that as a Class C3 facility, Station KAST-FM will invariably cover a significant portion of the Portland Urbanized area; **however**, this coverage does **not** preclude favorable consideration as a first local service."

In paragraphs 13 and 25, the references to Channel 230 should be revised to specify Channel 230C2.

In paragraph 17, the first sentence should read (added language in bold), "Although not fatal to the proposal, the reallocation of Channel **225C1** from Astoria to Gladstone will result in 4,510 persons having only four fulltime aural services and 132 persons having only 3 fulltime aural services."

In footnote 26, the reference coordinates for the Channel 259A allotment at Ilwaco, Washington, should be 46-18-**33** and 124-02-31, rather than 46-18-**32** and 124-02-31.

In paragraph 23, the allotment to Long Beach, Oregon of Channel 224A should be deleted. (The Long Beach allotment is in Washington, which already is listed in paragraph 23.)

Counterproposal's suggested allotment of Channel 226C3 at Gladstone, Oregon, and Mid-Columbia's and First Broadcasting's originally suggested allotment of 226A at Trout Lake, Washington.

The May 28 Order resolved this conflict by holding that the proposed allotment of Channel 226C3 to Gladstone, Oregon, is entitled to a dispositive preference over the proposed allotment of Channel 226A at Trout Lake. Nonetheless, as shown in the Counterproposal and in the attached engineering statement of Herman E. Hurst, Jr., this action would not preclude the Commission in a subsequent order, if it found the public interest would be served thereby, from allotting Channel 236A at Trout Lake.

Mr. Hurst's statement also affirms that adoption of NNB's Counterproposal does not limit or prejudice the Commission in any future action it may deem warranted with respect to the other proposals before it in this docket. NNB's Counterproposal, from a technical standpoint, is truly separate or independent from the other proposals under consideration in this proceeding.

Not only is there no technical conflict preventing separate adoption of NNB's Counterproposal, the lengthy record in this proceeding is devoid of any opposition to any element of NNB's Counterproposal. In this situation, severance of NNB's Counterproposal from the rest of the proceeding is clearly appropriate, a result the FCC can easily accomplish by issuing separate reports when it resolves this proceeding.

In similar situations, the Commission has granted requests to sever portions of an FM allotment rulemaking proceeding. For example, when proponents have been able to specify a vacant channel that would eliminate mutually exclusive proposals or when comparison of certain mutually exclusive proposals in a proceeding could be easily resolved, the Commission has

issued a “First Report and Order” resolving those matters, and subsequently issued a “Second Report and Order” resolving the more complex or controversial proposals.<sup>2</sup>

Severance of NNB’s Counterproposal from the rest of this proceeding makes sense not only from a technical standpoint but is also likely to result in a saving of FCC resources and expedition in the provision of improved radio service in many communities. Severing the NNB Counterproposal will allow its proposed changes in the table of allotments to move forward and achieve finality, typically a requisite condition for the expenditure of funds, independently and more expeditiously than would occur were finality of the changes in the NNB Counterproposal tied to the more contested and arguably more complex aspects of other proposals in this proceeding.

NNB respectfully requests that the Media Bureau grant this Motion for Severance as part of any decision granting NNB’s Counterproposal. The severance and adoption of NNB’s Counterproposal would not affect the other proposals in this proceeding since the original petition for rulemaking and the other counterproposals do not conflict with the changes proposed in NNB’s Counterproposal, and no other party has objected to any portion of NNB’s Counterproposal.

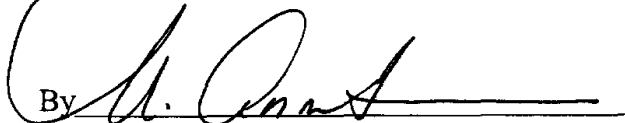
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<sup>2</sup> See, e.g., *Campbellsville, Kentucky, et al.*, 4 FCC Rcd 5770 (1989). See also *Farmington, California, et al.*, 10 FCC Rcd 9938 (1995).

Thus, the grant of this Motion will lead to expeditious effectuation of the modifications set forth in NNB's Counterproposal, thereby serving the public interest.

Respectfully submitted,

NEW NORTHWEST BROADCASTERS LLC

By   
M. Anne Swanson  
Nam E. Kim

Its Attorneys

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June 10, 2004



STATEMENT OF HERMAN E. HURST, JR.  
IN SUPPORT OF A MOTION TO SEVER  
A COUNTERPROPOSAL IN MB DOCKET NO. 02-136

Prepared for: New Northwest Broadcasters, LLC

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by New Northwest Broadcasters, LLC ("New Northwest") to prepare this statement in support of a Motion to Sever a Counterproposal (RM-10668) filed by New Northwest as Comments in MB Docket No. 02-136. Counterproposals in MB Docket 02-136, proposing numerous additional or alternate channels and/or allotments were also filed by Triple Bogey, LLC ("Triple Bogey"); Mid Columbia Broadcasting, Inc. et al ("Mid Columbia"); and Two Hearts Communications, LLC ("Two Hearts").

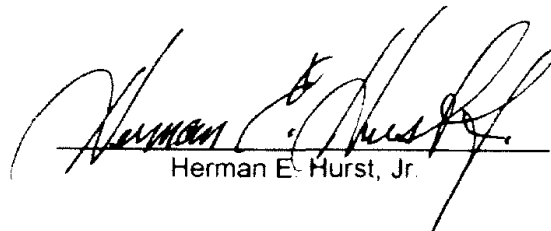
An engineering review of all the counterproposals revealed that New Northwest's proposed arrangement of allotments is compatible (i.e. satisfies the minimum distance spacing requirements of Section 73.207 of the FCC Rules) with the allotments and assignments proposed by all other counter-proponents, with the exception of the proposed addition of Channel 226A at Trout Lake, WA (advanced in the original Notice of Proposed Rulemaking). New Northwest proposed an alternate Channel 236A at Trout Lake. Substituting the New Northwest alternate Channel 236A at Trout Lake would eliminate any

STATEMENT OF HERMAN E. HURST, JR.  
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conflict between the New Northwest counterproposal and all other proposals (both the original and the counterproposals) filed in MB Docket No. 02-136. On May 28, 2004, the Media Bureau Audio Division released a Report and Order in MM Docket 02-136 (DA 04-1540), which was set aside by an Order released June 8, 2004 (DA 04-1647). While the Report and Order which has been set aside did not make an allotment to Trout Lake, Channel 236A remains available for allotment to Trout Lake should the FCC now or in the future determine that the public interest would be served by such an allotment. Adoption of the New Northwest counterproposal, as was done in the now set aside May 28 Report and Order, in no way limits in an engineering manner, the Commission's consideration and disposition of the other proposals made in this proceeding.

This statement was prepared by me and is believed to be true and correct, under penalty of perjury.

DATED: June 10, 2004



Herman E. Hurst, Jr.

### CERTIFICATE OF SERVICE

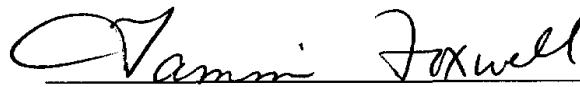
I, Tammi Foxwell, a secretary at Dow, Lohnes & Albertson, PLLC, hereby certify that a true and correct copy of the foregoing "Motion for Severance of Counterproposal" was sent on this 10th day of June, 2004, via first-class United States mail, postage pre-paid, to the following:

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\*denotes hand delivery

  
Tammi Foxwell